

AMENDED IN ASSEMBLY APRIL 24, 2000

AMENDED IN ASSEMBLY APRIL 10, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

## ASSEMBLY BILL

**No. 1877**

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**Introduced by Assembly Member Maldonado**

February 10, 2000

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An act to add Section 40723 to the Health and Safety Code, relating to air pollution.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1877, as amended, Maldonado. Air pollution: rules and regulations.

Existing law requires air pollution control districts and air quality management districts to adopt and enforce rules and regulations to achieve and maintain state and federal ambient air quality standards. Existing law also authorizes an air pollution control district or air pollution management district to establish a permit system, requiring a person to obtain a permit before taking any action that may release air contaminants.

This bill would require ~~that any manufacturer or vendor a district, upon the request of an operator of equipment subject to, or intended by the manufacturer or vendor to be used to satisfy, federal, state, or local air district rules or permitting requirements, to provide an express warranty to purchasers and owners of the equipment, warranting that the design and construction of the equipment conforms to applicable~~

~~regulations. The bill would also require a district to set specified emission limitations based on data submitted by equipment vendors, thereby imposing a state-mandated local program. The bill would also require the district an emission limitation or other air pollution control standard, to review the applicable emission limitation or air pollution control standard at the request of equipment operators, and to determine whether the limitation or standard should be required for a source category, under certain circumstances. By imposing additional duties on local air districts, this bill would impose a state-mandated local program.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 40723 is added to the Health and  
2 Safety Code, to read:  
3 40723. (a) ~~The Legislature finds and declares that~~  
4 ~~compliance with federal, state, and local air district air~~  
5 ~~pollution control regulations often involves the purchase,~~  
6 ~~installation, and use of new and innovative equipment~~  
7 ~~that lacks a proven record for the application, equipment~~  
8 ~~size, or operational duration in question. The Legislature~~  
9 ~~further finds and declares that stationary sources often~~  
10 ~~purchase this equipment at substantial cost without any~~  
11 ~~assurance of performance other than the representations~~  
12 ~~of the equipment vendor. Inadequate performance or~~  
13 ~~failure by the equipment can lead to legal liability as well~~  
14 ~~as excessive costs for the equipment operator, including,~~  
15 ~~but not limited to, lost production, replacement~~  
16 ~~equipment, and any required additional emissions offsets.~~  
17 ~~It is therefore the intent of the Legislature to encourage~~  
18 ~~accuracy in vendor representations regarding the~~

1 effectiveness of equipment subject to, or intended by the  
2 manufacturer or vendor to satisfy, regulatory emission  
3 limitations and other air pollution control requirements,  
4 and to establish clear remedies for breaches of these  
5 vendor warranties.

6 (b) Any manufacturer or vendor of equipment subject  
7 to, or intended by the manufacturer or vendor to satisfy,  
8 federal, state, or local air district rules or permitting  
9 requirements imposing emission limitations or other air  
10 pollution control standards shall provide a written  
11 express warranty to the initial or subsequent purchasers  
12 and owners of the equipment. The warranty shall state  
13 that the equipment is designed, built, and equipped so as  
14 to conform with those applicable rules or requirements  
15 and that the equipment is free from material and  
16 workmanship defects that could cause the equipment to  
17 fail to conform to relevant limits or performance  
18 specifications established in any federal, state, or local air  
19 district regulation or operating permit. This warranty  
20 shall be in addition to any implied warranty contained in  
21 state law, and shall apply to all equipment that is operated  
22 in accordance with the operating conditions specified by  
23 the equipment vendor. Equipment vendors subject to  
24 this section shall conform their operating conditions to  
25 the needs of the equipment purchaser, and the regulatory  
26 limits and performance specifications set forth in  
27 applicable federal, state, or local air district regulations or  
28 operating permits.

29 (c) Any equipment vendor that is subject to this  
30 section shall be liable to the initial or any subsequent  
31 purchaser for any costs of any required additional  
32 emission offset requirements that arise directly from the  
33 equipment's failure to satisfy the warranty.

34 (d) A district shall set emission limitations including,  
35 but not limited to, best available control technology and  
36 best available retrofit control technology, based on data  
37 and information provided by equipment vendors  
38 regarding the ability of equipment or control equipment  
39 in the same emission source category, to achieve the  
40 limits warranted by the vendor.

~~(e)~~ Upon the request of any operator of equipment that is subject to ~~this section~~ *an emission limitation or other air pollution control standard*, the district shall review whether the applicable ~~emission limitation or other air pollution control limitation or other~~ standard has been achieved and whether the limitation or standard should be required for the source category if all of the following conditions are true:

~~(1)~~

(a) The operator purchased equipment that was subject to or intended by the manufacturer or vendor to satisfy federal, state, or local air district rules or permitting requirements imposing emission limits or other air pollution control standards.

~~(2)~~

(b) An express warranty was provided to the operator pursuant to subdivision (b).

~~(3)~~

(c) The operator made a good faith effort, for a reasonable period of time, to operate the equipment in accordance with the operating conditions specified by the equipment vendor.

~~(4)~~

(d) The equipment failed to meet the warranty provided by the vendor.

~~(f) Nothing in this section prevents or limits the right of a permit applicant to purchase, or prevents or limits the right of a manufacturer or a vendor to sell, equipment to meet an emission level proposed in a permit application for the purpose of alternative compliance, experimentation, or emissions reduction credits generation.~~

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service

1 mandated by this act, within the meaning of Section 17556  
2 of the Government Code.

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